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Chair, Public Utilities Commission
Dianne Martin, Chairwoman
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301

Jonathan A. Evans
Presiding Officer
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

RE: Counsel for the Public – Comments on Investigation of Complaints Regarding Antrim Wind Energy Facility (Sound Complaints) (Docket No. 2021-02; Docket No. 2015-02)

Dear Chairwoman Martin and Presiding Officer Evans:

Thank you for the opportunity to comment on the Subcommittee's "Investigation of Complaints Regarding Antrim Wind Energy Facility." At this point, the Subcommittee has gathered extensive information and heard from interested parties. The arguments have been well-stated on both sides and the Subcommittee appears to be refining its inquiry. It is now clear that the issue of the proper time interval for sound measurement is a critical piece of the investigation. I will not opine on all aspects of the complaints but will attempt to address just this issue.

The Subcommittee must interpret N.H. ADMIN. R. Site 301.14(f)(2). This rule hinges on the application of the L₉₀ standard. This standard functions by averaging data over a time interval; therefore, it only has meaning if such a time interval is specified. Unfortunately, the Site Evaluation Committee ("Committee") rules do not specify a time interval in this context. The Certificate of Site and Facility ("Certificate") also does not specify a time interval.

The complainants have advocated for the use of the 1/8th (0.125) second interval described in N.H. ADMIN. R. Site 301.18(e)(6). However, this rule is meant to describe the minimum time interval for data collection. As reflected in Subcommittee questions, it would be meaningless to have the time interval for data collection and the time interval for averaging be the same as one cannot "average" one data point. There is also nothing in the rules to suggest

that importing this time interval for use with the L₉₀ standard was in any way intended by the drafters.

Antrim Wind Energy, LLC (“Antrim Wind”) has advocated for a one-hour time interval based in part upon the language of the Committee’s rules. For instance, an expert for the facility stated that “[t]he only time periods referenced directly” in Committee rules “are the 12 hours during the day and the 12 hours during the night.... Thus, the Leq time period can be interpreted as” establishing a 12-hour interval. RSG letter to Jean-Francois Latour of the Transalta Corporation, dated March 22, 2021, pg. 2, footnote 1; *see also* N.H. ADMIN. R. Site 301.18(e)(6). However, this 12-hour measurement is in no way related to the time interval for the L₉₀ measurement. In truth, nowhere do the rules state or imply the use of any particular time interval. I further note that one document from Antrim Wind states that ANSI standards “recommend” the use of a one-hour interval while alluding to the fact that Committee rules often cite to ANSI standards. TransAlta Corp. letter to Pamela Monroe, SEC Administrator, dated July 17, 2020 (“ANSI S12.9-2013 part 3 does not have a strict requirement on the specified time, but *recommends*/refers to 1 hour:”) (emphasis added)). Although it appears from material provided by Antrim Wind that a one-hour interval for some purposes is “common,” I have not seen anything documenting that such an interval is “recommended” for the purposes at issue here. *See* RSG letter to Jean-Francois Latour of the Transalta Corporation, dated March 22, 2021, pg. 2, second numbered paragraph (“This is the method required under the standard ANSI S12.9 Part 3. This standard states that a *common* averaging time for the Leq is one hour”) (emphasis added)). Therefore, the rule language and more generalized background information alone do not provide a firm basis for choosing a one-hour standard.

Several other options are also available to the Subcommittee. The Subcommittee could decide, for instance, that the time interval should be as close to instantaneous as possible. A small number of data points would provide sufficient detail to allow averaging and apply the L₉₀ standard. However, in resolving any ambiguity in the rule as applied to the facility in the Certificate, the Subcommittee should consider the intent of the Committee at the time the project was approved. It is possible that a requirement this strict would result in a threshold that virtually no wind facility would be able to meet. *See* Epsilon Associates, Inc. letter to Jean-Francois Latour of the Transalta Corporation, dated March 22, 2021, pg. 3. It is unlikely that the Committee intended to approve a project while simultaneously intending to impose conditions that would ensure it would never operate.¹

The Subcommittee could also determine that the rule and Certificate simply imply a “reasonable” time interval. However, the Subcommittee would then have to determine what it believes is reasonable in this context. Antrim Wind has essentially argued that a one-hour interval is reasonable. Conversely, the complainants have argued that a nearly instantaneous

¹ The Subcommittee may wish to investigate the actual impact such a standard would have using its independent expert and information provided by the complainants and Antrim Wind.

time interval is reasonable because of how people perceive and experience sound. At the June 17, 2021 public meeting on this issue, an expert for Antrim Wind appeared to state that an interval of 10 minutes is sometimes considered reasonable. The problem with this approach is that it leaves the Subcommittee with too much discretion to determine, post-certificate, what the compliance standard will now be. To be effective, the concept of reasonableness should be coupled with other factors.

One last option that has not yet been proposed is to apply the same methodology for sound measurement that was originally used in the application materials. In its application, Antrim Wind examined background sound levels and also predicted what it believed sound levels would be after the facility became operational. The Committee examined this material, appeared to credit the analysis, and issued a Certificate, presumably because it believed that this material demonstrated that the facility would comply with the rules. The L₉₀ standard appears in various places in the material as well as other standards that require application of a time interval. It seems appropriate for the Subcommittee to use the same methodology in determining post-certificate compliance that the Committee used in the application phase. In other words, it is appropriate to use a method that provides an “apples to apples” comparison. In my opinion, this option also appears to satisfy the concept of equity in that all parties knew what methodology was being used when the application was filed and could anticipate its use in the future. It is also a reasonable approach, provided that the selected methodology fits within industry standards. Finally, it comports with the intent of the Committee when it issued the Certificate in that one can assume that the Committee likely intended to compare actual operation to the approved predicted outcome in a consistent way.

Because I lack the expertise of many of the other parties involved, and because the time interval used is not immediately obvious from the materials, I will not identify a specific time interval; however, I believe that Sections 5 and Appendix B of the *Sound Level Assessment Report*, dated June 8, 2015, as updated and supplemented, is likely the best place to begin searching for the necessary information.

Sincerely,



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KAB/cmc